



2014 Update

to

Exactions and Impact Fees in California

3rd edition

EXACTIONS AND IMPACT FEES IN CALIFORNIA

Authors:

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Chapter 1 - Introduction

Page 4. Add the following text to the left hand margin opposite the fifth paragraph:

The best graphic representation of the tense fiscal relationship between the state government and local agencies is *Major Milestones: Over Four Decades of the State-Local Relationship* which covers the events from 1972 to 2012. View this swirl diagram on the Legislative Analyst Office's website: <http://www.lao.ca.gov/Publications/Detail/2669>

Page 5. Add the following paragraph immediately following the first paragraph:

Proposition 26. Proposition 13 (1978) required state tax increases to receive 2/3-votes in each house of the Legislature, but did not change the majority-vote standard for raising state fees. Frustrated by attempts to classify state revenue increases as “fees” instead of “taxes,” business interests successfully sponsored Proposition 26 in 2010. Proposition 26 also amended the California Constitution to say that local levies, charges, or exactions are “taxes” that need local voter approval, unless they fit into one of the seven specified exemptions (Article XIII C, § 1[e]). Chapter 9 describes Proposition 26 (see pp. 182-3). Most builders, planners, and their attorneys believe that Proposition 26 does not affect the processing fees that city and county planning departments charge for reviewing land use applications. Further unaffected are impact fee exactions that local officials impose on builders as conditions of approving their projects.

Page 5. In the third paragraph, titled **Earmarking Revenue**, note these corrections:

Proposition 111 passed in 1990, not 1988.

Proposition 172 passed in 1993, not 1994.

Page 5. Replace the fourth paragraph with the following paragraph:

State Bonds Find Favor. By the late 1990s, voters' attitudes began to shift in favor of statewide bond issues that financed local projects as well as state facilities. The turning point was Proposition 1A (1998) which authorized \$9.2 billion in state general obligation bonds for educational facilities, with most of the money (\$6.7 billion) going for local schools. Between 2000 and 2014, voters approved state general obligation bonds for infrastructure worth nearly \$97 billion. According to the Legislative Analyst's Office, local officials receive and administer nearly 60% of the state government's infrastructure bond spending. Table 1-1 summarizes the purposes of these bond issues.

Page 6. Replace Table 1-1 with the following table:

Table 1-1. State Infrastructure General Obligation Bonds Approved Since 2000

Education (K-12 & higher education)	\$35.8 billion
Transportation (highways, transit, high speed rail)	\$29.9 billion
Resources & Environmental Protection (flood control, parks, open space)	\$19.6 billion
Other (children’s hospitals, prisons, housing, local libraries)	<u>\$11.7 billion</u>
Total	\$96.9 billion

Source: Legislative Analyst’s Office, February 26, 2014

Pages 6 and 7. Replace the fourth paragraph on page 6 and the first partial paragraph on page 7 with the following paragraph:

Until their demise in 2011-12, redevelopment agencies’ capture of property tax increment revenues was another source of fiscal competition among and between cities and counties. The former diversion of property tax increment revenue¹⁷ was a reliable revenue stream that paid for redevelopment agencies’ debts, including tax allocation bonds, to finance bold steps to attract and retain private investment. But those property tax increment dollars had to be diverted from other local agencies, resulting in policy conflicts and legal challenges. Some counties charged that city officials turned to redevelopment not to eradicate blight, but simply to capture property tax increment revenue or attract retailers and their sales tax revenues.¹⁸ In addition, state officials resented spending General Fund revenues to backfill the school districts’ shares of local property taxes.

Page 7. After the first full paragraph, insert this paragraph:

When the Legislature and Governor again raided redevelopment agencies’ funds with a Supplemental Educational Revenue Augmentation Fund (SERAF), local officials sponsored and the voters passed Proposition 22 (2010). Proposition 22 constitutionally restricted the Legislature’s power to shift funds from redevelopment agencies to other local governments. The passage of Proposition 22 set up the confrontation which led to the 2011 bill that dissolved redevelopment agencies, leading to their dissolution in 2012.

Page 7. Replace Table 1-2 with the following table:

**Table 1-2. California’s Population
Will Continue to Grow**

<u>Year</u>	<u>Population (in millions)</u>
1950	10.6
1960	15.7
1970	19.9
1980	23.7
1990	29.8
2000	33.9
2010	37.3
2020 (projected)	40.6
2030 (projected)	44.3
2040 (projected)	47.7

Page 9. In Table 1-3, note that because of the dissolution of redevelopment agencies, Tax Allocation Bonds are no longer available.

Page 9. Because of the demise of redevelopment agencies, delete the second full paragraph, **Redevelopment Tax Allocation Bonds.**

Page 10. Because of the demise of redevelopment agencies, delete the first paragraph.

Page 12. Add the following text to the left hand margin opposite the second full paragraph.

New Interest in IFDs?

Because of the dissolution of redevelopment agencies in 2011-12, local officials and private investors showed renewed interest in Infrastructure Financing Districts. San Francisco officials, for example, created an IFD to pay for the public works to stimulate private investment on Potrero Hill. They also adapted the IFD statutes to finance waterfront improvements for the America's Cup. Some legislators want to ease the statutory procedures for forming IFDs so that local officials can tap into the non-school shares of property tax increment revenues. In 2014, the Brown Administration also signaled its interest in allowing more IFDs.

Page 13. Replace the sidebar comment in the right hand margin with this sidebar comment:

Building a Basic Bookshelf

Besides this book, what are the essential resources on public finance that attorneys, planners, and consultants should keep within reach? While individual preferences vary, here are three basic resources that you can use:

- *Guide to Local Government Finance in California* by Michael Coleman, et al., published by Solano Press Books (2012). Also available Kindle-ready.
- *California Debt Issuance Primer*, published by the California Debt and Investment Commission (2006). Also available online: www.treasurer.ca.gov/cdiac/debtpubs/primer.pdf
- *An Introduction to California Mello-Roos Community Facilities Districts* by David C. Bort, published by Orrick, Herrington & Sutcliffe LLP (2006). Also available online: www.orrick.com/Events-and-Publications/Documents/1180.pdf

Besides books, other helpful sources of public finance information appear on these websites:

- California Debt and Investment Advisory Commission (reports).
www.treasurer.ca.gov/cdiac/
- Legislative Analyst's Office (reports)
www.lao.ca.gov
- Legislative Counsel (full text of the California Constitution and state statutes)
<http://leginfo.legislature.ca.gov>
- Public Policy Institute of California (reports)
www.ppic.org

Chapter 2 – Defining the Terms

Page 22. Delete the ‘In-lieu fees...’ paragraph and replace with the following:

In-lieu fees are used when requiring a developer to dedicate land would not be optimal or feasible. For example, requiring each subdivider to dedicate land for school or recreational purposes might not achieve the goal of providing such facilities for large, developing suburban areas if the sites are either inadequate in size or not in the best locations. Imposing an in-lieu fee can solve this problem by substituting a monetary payment for dedication. Fees collected from numerous subdividers can then be used at a later date to purchase an appropriate site and construct the necessary improvements. In-lieu fees have been upheld by the courts in many cases. *Remmenga v. California Coastal Commission* (2d Dist. 1985) 163 Cal. App. 3d 623. The Supreme Court noted that in-lieu fees are “utterly commonplace” and “functionally equivalent to other types of land use exactions” when deciding to treat monetary and land use exactions similarly. *Koontz v. St. Johns River Water Management District* (2013) 133 S.Ct. 2586, 2599.

Page 24. Add a sidebar comment:

In the 2013 case *Koontz v. St. Johns River Water Management District* (2013)133 S.Ct. 2586, the U.S. Supreme Court held that money exactions must satisfy the “nexus” and “rough proportionately” requirements of *Nollan* and *Dolan*. The majority required *Nollan/Dolan* scrutiny to apply in the case of ad hoc monetary exactions, but did not clarify whether the heightened scrutiny now also applies to generally applicable monetary exactions. According to the dissenting opinion, it remains to be seen whether the majority will approve the *Ehrlich* rule that *Nollan/Dolan* “apply only to permitting fees imposed ad hoc and not to fees that are generally applicable.” *Id.* at 2608.

Page 41. Insert following paragraph after 1st paragraph:

In 2013, the appellate court in *Griffith v. Pajaro Valley Water Management* (6th Dist. 2013) 220 Cal App. 4th 586 further clarified Proposition 218 when taxpayers brought suit to challenge an ordinance increasing groundwater augmentation charges for the operation of a well. The appellate court held that the groundwater augmentation charge at issue constituted a water service fee or charge within the meaning of Proposition 218 and was therefore exempt from voter approval. *Id.* at 596. Proposition 218 requires “fees or charges for sewer, water, and refuse collection services” to survive a majority protest of property owners while other property related fees and charges must survive both an area election and a majority protest. Art. XIII D, §6(c). The court explained that the augmentation charge “does not differ materially ‘from a charge on delivered water’” and “if the charge for water delivery and water extraction are akin, then the services behind the charges are akin.” *Id.* at 595. Citing Proposition 218’s Omnibus Implementation Act defining water, the court concluded, “the entity who produces, stores, supplies, treats, or distributes water necessarily provides water service.” *Id.*

The *Griffith* court also clarified who should be given notice of protest hearing under to Proposition 218. When an agency wishes to impose or increase a fee or charge, it is required to “conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners” of each affected parcel. Art. XIII D, §6(a)(2). The appellate court in *Griffith* explained that Proposition 218 requires notice of a protest hearing be mailed to each record owner (those owners appearing on the last equalized tax roll), and not to tenants or customers. 220 Cal App. 4th at 596. The notice of a protest hearing on an increased water service fee or charge is required to include the following information: (1) identify the parcel subject to the new fee or charge, (2) the amount of the fee or charge, (3) the reason for the increased fee or charge, (4) how the increased fee or charge will be used, and (5) the date, time and location of the protest hearing, where written protests may be mailed. Art. XIII D, §6(a)(1).

Chapter 3 – Constitutional Authority for and Limitations on Exactions

Page 57. Add the following paragraphs immediately following the last full paragraph.

In *Koontz v. St. Johns River Water Management District* (2013) 133 S. Ct. 2586, the U.S. Supreme Court considered whether an impact fee imposed to address a development project's effects is subject to the "heightened scrutiny" articulated by the Court in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*, both discussed above, rather than a more deferential standard.

Koontz owned 14.9 acres in Florida. Because of the presence of wetlands, Koontz needed a permit under Florida law, which authorizes conditions "necessary to assure" that construction will "not be harmful to the water resources of the district." (Another applicable state law applied to the proposed project's effects on wetlands, per se.) Koontz offered a conservation easement over approximately 11 acres of the site. The District found this inadequate to offset the project's impacts but indicated they would approve the proposed development under one of two conditions: 1) reduce development to one acre and increase the conservation easement to 13.9 acres; or 2) pay money for improvements to District land elsewhere (i.e., "offsite mitigation"). Koontz found these proposed conditions excessive and sought relief under Florida law that allows money damages if a state agency's action is "an unreasonable exercise of the state's police power constituting a taking without just compensation."

In determining the applicable standard for reviewing the "monetary exaction" represented by the fee to provide offsite mitigation, the Court said that "heightened scrutiny" does apply. In addition, the Court considered whether there is a difference between the circumstance where an applicant challenges a condition to an approval and a denial because the applicant refuses to comply with a proposed condition. Here, the Court said the distinction does not matter.

This case has particular relevance because, faced with the same question, states have answered in different ways. While some states have said that "heightened scrutiny" does not apply to impact fees, others have said it does, and California has said, "It depends." In *Ehrlich v. Culver City*, discussed below, the California Supreme Court held that "ad hoc" impact fees, that is, fees established for a specific project, are subject to heightened scrutiny. However, citywide or other fees of general application (i.e., "legislative" impact fees), the court said, are subject to a less demanding standard. (In characterizing this less demanding standard, the California Supreme Court has said, "[T]he arbitrary and extortionate use of purported mitigation fees, even where legislatively mandated, will not pass constitutional muster." *San Remo Hotel v. San Francisco* (2002), discussed below.) While the majority opinion in *Koontz* was silent on this question, the dissent said, "Perhaps the Court means ... to curb the intrusion into local affairs that its holding will accomplish" and will adopt the *Ehrlich* approach (133 S. Ct. at 2608). Thus, the ongoing importance of the *Ehrlich* decision is somewhat unclear.

Page 62. Add the following paragraph immediately following the last paragraph in the sidebar, “Challenges to Inclusionary Housing Requirement.”

Sterling Park, L.P. v. City of Palo Alto. In *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal. 4th 1193, the California Supreme Court held that Palo Alto’s inclusionary housing requirements imposed in this case – requiring 10% of a 96-unit project be set aside as below market rate housing, with an option for the City to purchase the units, and that the developer pay an “in lieu” fee – are covered by California’s Mitigation Fee Act (Gov’t Code section 66000 *et seq.*), including Government Code section 66020. By its terms, Section 66020 applies to “the imposition of any fees, dedications, reservations, or other exactions imposed on a development project, as defined in Section 66000, by a local agency.” Characterizing the requirements imposed here as exactions, rather than simply land use regulations, meant that the statute of limitations and “pay under protest” provisions” of Section 66020 applied, rather than the statute of limitations of the Subdivision Map Act.

Chapter 4 – Exactions: Statutory Authority and Limitations

Page 81. Add the following paragraphs immediately above the header: Interim School Facilities.

Assembly Bill 1359 (Hernandez, 2013) amends the Quimby Act to allow fees imposed under that law to be used to develop or rehabilitate park or recreational facilities in a neighborhood other than the neighborhood where the “paying” subdivision is located, provided certain requirements are met. These include:

- The “other” neighborhood has fewer than three acres of park area per 1,000 population
- The neighborhood where the “paying” subdivision is located already has parks that meet or exceed the prevailing city ratio, but at least three acres per 1,000 population
- The legislative body of the city or county holds a public hearing before using the fees
- The legislative body of the city or county makes a finding, based on substantial evidence, that it is reasonably foreseeable that future inhabitants of the “paying” subdivision will use the proposed park and recreational facilities where the fees are used
- Fees may only be used within a specified radius consistent with the general plan or specific plan and the city’s or county’s Quimby Act ordinance
- “Specified radius” for this purpose includes a planning area, zone of influence, or other geographic region designated by the city or county

(Gov’t Code §66477(a)(3)(B))

In addition, AB 1359 authorizes joint or shared use agreements with one or more other public districts in the jurisdiction (e.g., a school or community college district) to facilitate access to park or recreational facilities for residents of subdivisions with fewer than three acres of park area per 1,000 members of the population. (Gov’t Code §66477(a) (6)(B))

Chapter 5 – Overview of the Fee Adoption Process

Page 104 Insert the following paragraph immediately above **FINDINGS** Section 66001(d).

A school facility needs analysis lacked sufficient justification to justify a fee which failed to give a credit for demolition of existing residential square footage. The District failed to carry its burden to produce evidence showing a reasonable relationship between the need for school facilities and the replacement of existing square footage. *Cresta Bella, LP v. Poway Unified School District* (2013) 218 Cal.App.4th 438.

Chapter 6 – School Facilities

Page 131 Insert the following paragraph immediately above **Section 65995.6**

In the absence of a study to support the imposition, it was an error for a school district to approve school fees on all new residential square footage without giving credit for residential square footage demolished to build the new project. The developer was entitled to a partial refund. *Cresta Bella, LP v. Poway Unified School District* (2013) 218 Cal.App.4th 438.

Page 132 Insert the following paragraph immediately above **Commercial, Industrial and Senior Citizen Housing**.

In the absence of a study to support the imposition, it was an error for a school district to approve school fees on all new residential square footage without giving credit for residential square footage demolished to build the new project. The developer was entitled to a partial refund. *Cresta Bella, LP v. Poway Unified School District* (2013) 218 Cal.App.4th 438.

Page 130 Insert in the left hand margin adjacent to the discussion of *Warmington Old Town Associates*.

Similar to the holding in *Warmington Old Town Associates, LP*, a developer demolishing existing units and building a new larger project must be given credit for the demolished square footage. *Cresta Bella, LP v. Poway Unified School District* (2013) 218 Cal.App.4th 438.

Chapter 7 – Challenging Exactions – Protests, Legal Actions, and Audits

Page 145-146. Replace the last full paragraph on 145 and onto 146 with the following paragraph:

In *Dolan v. City of Tigard* (1994) 512 U.S. 374, the U.S. Supreme Court held that the City had the burden to show that the impacts of the project justified the extent of the condition. This is contrary to the presumption of constitutionality that courts have traditionally applied to municipalities' exercise of the police power. See *Euclid v. Ambler Realty Company* (1926) 272 U.S. 365 (a zoning ordinance is upheld unless its "provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.") The majority in *Dolan* distinguished this line of cases as only applicable to legislative decisions, as opposed to adjudicatory decisions such as the one at issue in the *Dolan* case. In addition, *Dolan* was a case involving dedication of land, and not "simply a limitation on the use petitioner might make of her own parcel. . . ." *Dolan v. City of Tigard* (1994) 512 U.S. 374. Therefore, according to the court, it was appropriate to shift the burden of proof. A similar burden now applies in the case of one-time fees (*Ehrlich*), as well as all ad hoc mitigation measures. CEQA Guidelines § 15126.4.¹ In *Koontz v. St. Johns River Water Management District* (2013) 133 S. Ct. 2586, 2599 the U.S. Supreme Court held that "so-called 'monetary exactions' must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*. In contrast, a land use limitation affecting land use height, bulk, or setback, or involving application of a generalized fee, is reviewed under a more deferential standard of review. *Breneric Associates v. City of Del Mar* 69 Cal App 4th 166; *Ehrlich* 12 Cal 4th 854.

Footnote 1: All code sections refer to the California Government Code unless stated otherwise.
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Page 148. Insert following paragraph after 1st paragraph:

In *Sterling Park L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193 the California Supreme Court held that a below market rate program that compelled the developer to give the agency a purchase option is an exaction under section 66020. The Supreme Court further held that section 66020 "governs conditions on development a local agency imposes that divest the developer of money or a possessory interest in property, but not restrictions on the manner in which a developer may use its property." *Id.* at 1207.

Page 151. Add the following paragraph immediately following the second paragraph (“The effect of 1992...”):

In *Sterling Park L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1208 the California Supreme Court clarified that section 66020(e)’s refund or return provision “concerns remedies for a prevailing plaintiff and does not limit the scope of section 66020, subdivision (a).” The court used the example that if a protesting party, pursuant to subdivision (a)(1), ensures performance rather than paying a fee, there has still been an exaction; however, the protesting party’s remedy “will not include a repayment of a payment that was never made.” *Id.*

Page 160. Replace second to last paragraph on page 160 (“A nonpecuniary interest...”) with the following paragraph:

A nonpecuniary interest in the outcome of litigation may not justify a refusal to award fees under section 1021.5. In *Conservatorship of Whitley* (2010) 50 Cal. 4th 1206, the California Supreme Court held a litigant’s subjective motivation for “her brother’s welfare or other personal concerns” does not preclude her from obtaining fees under the private attorney general fee statute. *Id.* at 1226.¹³ The Court examined the three requirements that litigants must prove in section 1021.5: “(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of private enforcement are such as to make the award appropriate.’” *Id.* at 1214. Focusing on the third requirement, the Court found that section 1021.5 is “primarily concerned with the infeasibility” of pursuing public interest litigation due to “large attorney fees and nonpecuniary outcomes that make ‘these cases ... prohibitively expensive’ for most citizens. *Id.* at 1224. As such, an award “is appropriate when the cost of the claimant’s legal victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff ‘out of proportion to his individual stake in the matter. *Id.* at 1215.¹

Footnote 13: This ruling disproves a line of appellate cases that historically could justify a refusal to award fees due to a nonpecuniary interest. See *Williams v. Board of Permit Appeals* (1st Dist. 1999) 74 Cal. App. 4th 961 (The court held that the homeowner’s interest in maintaining the aesthetic integrity of his immediate neighborhood and protecting both his property’s privacy and its access to light, air, and views, constituted an “individual stake” as important as any pecuniary interest that, when weighted against the lesser public interest did not justify a fee award.)

Footnote 14: The Court wanted to steer away from looking at the litigant’s abstract personal stake and focus on “financial incentives and burdens related to bringing suit.” *Id.* at 1216.

Page 160-161. Delete last paragraph (“A court may, however ...”) and replace with the following paragraph.

Following *Whitley*, the appellate court in *City of Maywood v. Los Angeles Unified School District* (2012) 207 Cal. App. 4th 1075 found that *Whitley*’s holding applies equally to both private and public litigants seeking attorneys’ fees under section 1021.5. In *City of Maywood*, a city filed a petition for writ of mandate seeking to overturn a school district’s decision to certify a final environmental impact report (“FEIR”) that analyzed the environmental consequences of constructing a high school. The appellate court held that a court could not consider a City’s nonpecuniary interests (i.e., preservation of its tax base) when evaluating the financial burden requirement. Following the line of reasoning from the *Whitley* court, in *Maywood* the court found no statutory language or legislative history indicating different standards were intended for successful public and private parties. Additionally, the California Supreme Court’s concern that attempting to quantify and weigh the sufficiency of a private litigant’s nonpecuniary interest, such as improved aesthetics, would be similarly problematic. *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 431-432.

Chapter 9 - Funding Neighborhood-Specific Infrastructure and Amenities

By Harriet A. Steiner and Seth Merewitz

Page 174. Replace the fourth paragraph in the Mello-Roos Special Taxes section with the following paragraph:

Mello-Roos special taxes may be imposed for the public services enumerated in the Act. Examples of these services include:

- Police protection services, including certain criminal justice services
- Fire protection and suppression services
- Ambulance and paramedic services
- Park, parkway, and open space maintenance and lighting
- Street and road maintenance and lighting
- Storm drainage systems O&M
- Plowing and snow removal services
- Services related to removal or remediation of hazardous materials
- Recreation program services, library services, the maintenance costs of elementary and secondary school sites and structures, and O&M of museums and cultural facilities
- O&M of any real or tangible property owned by the local agency that has an estimated useful life of five or more years § 53313

Page 181. Replace the first paragraph in the Repeal of Assessment by Initiative section with the following paragraph:

Proposition 218 may subject assessments to amendment, reduction, or repeal by initiative. Cal. Const., art. XIII C, § 3. Under traditional law, special assessments could not be challenged by voter initiative. *Chase v. Kalber* (3rd Dist. 1915) 28 Cal.App. 561. Proposition 218 seeks to expand the power and scope of the initiative to include reduction or repeal of special assessments, as well as taxes, fess, and charges. However, the initiative power does not permit the electorate to set water rates so low that they are inadequate to pay the costs state law requires a water district to pay. (*Mission Springs Water Dist. v. Verjil* (4th Dist. 2013) 218 Cal.App. 4th 892, 921.

Pages 181-182. Replace the first paragraph in the Utility Rates After Proposition 218 section with the following paragraph:

Besides assessment districts, Proposition 218 also had an impact on certain fees and charges. Proposition 218 defines a “fee” or “charge” subject to its provisions as any levy other than an *ad valorem* tax, a special tax, or an assessment, imposed as an incident of property ownership, including a user fee or charge for a property related service. Cal. Const., art. XIID, § 2. Property-related fees do not have to be established on a parcel-by-parcel basis; rather, grouping similar users together and calculating fees on a class-by-class basis is a reasonable method of allocating the costs of the service. *Griffith v. Pajaro Valley Water Management Agency* (6th Dist. 2013) 220 Cal.App. 4th 586, 600-601. Such property-related fees and charges are subject to certain procedural requirements under Proposition 218, including notice, a hearing, and voter approval of certain new or increased fees and charges. Unlike the voting procedure for assessments, each parcel owner receives one vote weighted the same regardless of the proportional amount he or she must pay. For fees, there is no individual protest procedure for each rate class. (*Morgan v. Imperial Irrigation Dist.* (4th Dist. 2014) 2014 Cal.App. LEXIS 115, 29-33.)

Page 182. Replace the third paragraph in the Utility Rates After Proposition 218 section with the following paragraph:

However, this changed with the decision in *Bighorn-Desert View Water Agency v. Verjil* (2006) 29 Cal. 4th 205. Reinforcing dicta in *Richmond v. Shasta Community Services District* (2004) 32 Cal. 4th 409, the Supreme Court ruled that consumption-based water rates are subject to Proposition 218. See also *Pajaro Valley Water Mgmt. Agency v. Amrhein* (6th Dist. 2007) 150 Cal.App. 4th 1364 (holding, in light of *Bighorn*, that a groundwater augmentation charge for operators of wells is a fee or charge subject to Proposition 218.) While groundwater augmentation charges are subject to Proposition 218, they are “water service” fees and therefore exempt from the voter approval requirements of California Constitution Article XIII D, section 6(c). *Griffith v. Pajaro Valley Water Management Agency* (6th Dist. 2013) 220 Cal.App. 4th 586, 596.

Page 182. Replace the case citation in the sidebar in the left hand margin opposite the third paragraph in this section with the following:

Paland v. Brooktrails Township Comty. Servs. Dist. Board of Directors (1st Dist. 2009) 179 Cal.App. 4th 1358.

Page 183. Replace the fifth full paragraph on this page with the following paragraph:

“(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D [Proposition 218].” User fees for government provided water, sewer or trash service are imposed pursuant to Proposition 218. Most special assessments are also property based and imposed under Proposition 218. However, certain business improvement district (“BID”) assessments on businesses may need to be reevaluated under Proposition 26 since the BID assessment is not real property based and is not subject to Proposition 218. A BID assessment may, or may not, meet the requirements of Proposition 26 that the charge be “imposed for a specific benefit conferred...” See Cal. Const. art. XIII C, §1(e)(1). The Legislature has clarified, however, that BID and tourism marketing district assessments are not taxes merely because they might generate indirect, secondary benefits for nonpayers. A specific benefit is not excluded from classification as a “specific benefit” because there is an incidental benefit to nonpayers. § 53758.

Page 183. Replace the sixth full paragraph on this page with the following paragraph

Fees and charges that do not fall within one of the identified seven exceptions are defined as “taxes” and would require voter approval. However, if a fee or charge is not paid to, or for the benefit of, a local government then the fee or charge is not a tax. For example, a paper carryout bag charge retained by a retail store is not a tax. *Schmeer v. County of Los Angeles* (2nd Dist. 2013) 213 Cal.App. 4th 1310, 1328-1330. In addition, under Proposition 26 the governmental agency has the burden to prove by a preponderance of the evidence that the fee or charge is not more than the reasonable cost of the governmental activity and that the manner of allocating the costs bear a fair or reasonable relationship to the person paying the charge’s burden on the activity or benefit from the activity. Proposition 26 raises many issues regarding the structure and amount of fees currently in use in California. As with many initiatives, its scope and impact may not be known for some time.

Page 183. *Replace the seventh full paragraph on this page with the following paragraph:*

Proposition 26 applies to fees imposed by the state as of January 1, 2010. For local agencies, Proposition 26 only applies to those fees and charges newly imposed or increased after November 2, 2010. Proposition 26 is not retroactive as to local governments. *Brooktrails Township Community Services Dist. v. Board of Supervisors of Mendocino County* (1st Dist. 2013) 218 Cal.App. 4th 195, 198.

Page 184. Replace the current County Service Areas section with the following:

In 1953, the Legislature responded to the intensive residential, commercial, and industrial development in the unincorporated areas of many counties with the passage of the County Service Area Law. § 25210 et seq. A County Service Area (CSA) is not a special district, but rather provides counties with an alternative method to finance and provide needed public facilities and services to residents and property owners of unincorporated areas. § 25210.1(e). A CSA may levy taxes and benefit assessments and establish fees and charges. §§ 25215.2-25215.6. Section 25213 enumerates the various types of services that may be provided, including police protection, structural fire protection, local parks, recreation, or parkway services. Moreover, the board of supervisors is explicitly authorized to maintain libraries within a CSA. § 25213(w).

The county board of supervisors acts as the governing body of the CSA. The preliminary proceedings to establish a CSA are discussed in sections 25211 through 25211.5. Sections 245211.1 and 25211.3 provide two methods for the institution of proceedings for the establishment of a CSA: (1) a resolution of application adopted by the board of supervisors, or (2) a petition signed by the requisite number of registered voters within the proposed area and filed with the county's Local Agency Formation Commission.

Page 186 Replace the citation to Civ. Code §§ 1350 et seq. in the first paragraph of the Homeowners' Associations section with a citation to Civ. Code §§ 4000 et seq.

The Legislature reorganized and recodified the Davis-Stirling Common Interest Development Act in 2012, effective January 1, 2014.

Notes

Page 314 Under Chapter 7 reference to footnote 1; replace the last sentence with the following sentence:

The text of these sections may be found at Appendix N.

Page 314 Under Chapter 7 reference to footnote 2; replace the last sentence with the following sentence:

See Chapter 2 for additional guidance on defining these terms.